

Regular Session, 2010

# ACT No. 611

HOUSE BILL NO. 973

BY REPRESENTATIVE FOIL

## AN ACT

To amend and reenact R.S. 33:130.812 (B) and (C) and to enact R.S. 33:130.812(D), relative to Sustainable Energy Financing Districts; to provide relative to financing for projects in such districts; to provide for property assessment and collection of such assessments within such districts; to provide for notice of program loan; to provide terms, conditions, and requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 33:130.812 (B) and (C) are hereby amended and reenacted and R.S. 33:130.812(D) is hereby enacted to read as follows:

§130.812. Financing for projects

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B.(1) The owner of residential or commercial immovable property within the district may request financing in the form of a loan from the district to cover the costs of energy efficiency improvements or renewable energy improvements that the owner contracts to make to the immovable property. Such financing shall include interest rates and administrative fees as determined by the district. The district shall accept or reject the request according to criteria established by the district and make such loan upon terms and conditions that shall be set forth in the ordinance or resolution. However, the term for repayment of a loan, together with interest rates and administrative fees, shall not exceed twenty years.

(2) In the event that the property for which an energy efficiency improvement or renewable energy improvement loan is sought is encumbered by a mortgage, then the total amount lent for such property shall not exceed ten percent of the reasonable expected fair market value of the property, determined using an

1 appropriate value test, which may include an assessment of the reasonable expected  
2 value of the property with the completed improvements on the property as defined  
3 and provided in program rules, or the price of the property at its last sale.

4 (3) No owner of immovable property shall be eligible for a loan from a  
5 district unless there is available equity in the property, meaning that the current value  
6 as determined using an appropriate value test of the subject property exceeds the  
7 current mortgage loan balances for the mortgage loans encumbering the subject  
8 property, and that the dollar amount of loans from the district for a particular  
9 property shall not exceed the remaining equity value in the property. The total loan-  
10 to-value ratio for all loans secured by the immovable property shall not exceed one  
11 hundred percent. The calculation of equity value used to determine the maximum  
12 amount of financing available for a particular property may take into account the  
13 reasonable expected value of the property with the proposed energy efficiency or  
14 renewable energy improvements installed.

15 (4) The maximum amount of any assessment to be repaid in any year shall  
16 not exceed the amount of principal and interest for the current year based on the  
17 amortization schedule for the loan. In the event of nonpayment or default, there shall  
18 be no acceleration of the debt, and tax delinquency shall exist only for assessments  
19 not paid when due.

20 (5) In order to qualify for financing, the property owner shall be current on  
21 all outstanding mortgage loans encumbering the property upon which the energy  
22 efficiency improvements or renewable energy improvements are proposed to be  
23 installed.

24 (6) In order to qualify for financing, the property owner shall demonstrate  
25 an ability to repay the loan as specified in the program rules.

26 (7) It shall be required that an appropriate evaluation such as energy audit  
27 or renewable energy system feasibility study be conducted on the qualifying real  
28 property and reviewed by the district prior to approval of the financing.

29 (8) Where energy efficiency or renewable energy improvements are  
30 proposed to be installed on residential properties, the district shall make written

1           verification that the improvements are installed and all work is completed  
2           satisfactorily before program loan funds are disbursed. In the alternative, funds for  
3           improvements may be disbursed based on multiple stages of completion, and loan  
4           funds for a particular stage of completion shall not be disbursed until the district  
5           conducts written verification that the corresponding stage of work is satisfactorily  
6           completed.

7                   (9) All energy efficiency and renewable energy improvements financed by  
8           the program shall be performed by duly qualified contractors, subcontractors, or  
9           tradesmen pursuant to program rules.

10                   (10)(a) Where an energy efficiency or renewable energy improvements loan  
11           in the amount of one hundred thousand dollars or more is proposed for a commercial  
12           property and that property is encumbered by a mortgage, the mortgagee, its  
13           successors or assigns, or mortgage servicer shall be provided prior written notice, by  
14           certified mail, return receipt requested of the proposed program loan. The  
15           mortgagee, its successors or assigns, or mortgage servicer shall have thirty days after  
16           receipt of such notice to approve or deny the proposed program loan. The notice  
17           shall contain the following information:

18                           (i) The proposed borrower's name.

19                           (ii) The description of the property for which the proposed improvements are  
20           to be made.

21                           (iii) A description of the improvements to be made.

22                           (iv) The proposed dollar amount to be loaned.

23                           (v) The proposed amortization period in which the loan is to be repaid.

24                           (vi) A statement that the mortgagee, its successors or assigns, has thirty days  
25           from receipt of the notice to approve or deny the proposed loan.

26                           (vii) The name and address of the office where to submit a written approval  
27           or denial of the proposed loan.

28                           (b) If the mortgagee, its successors or assigns, or mortgage servicer approves  
29           the proposed loan or fails to give a written denial of the proposed program loan to  
30           the local government subdivision or district within the thirty day period, then the

1 parties may proceed with the program loan without further notice to the mortgagee,  
2 its successors or assigns or mortgage servicer. In the event the mortgagee, its  
3 successors or assigns, or mortgage servicer provides a written denial, then the  
4 proposed loan shall not be made.

5 C.(1) ~~The If agreed by the district, the~~ amount of the loan including interest  
6 rates and administrative fees shall be assessed against the immovable property upon  
7 which the improvements are placed and shall be collected in the same manner as is  
8 provided for the ad valorem taxes assessed on the property by the local governmental  
9 subdivision creating the district. In order to secure repayment of loans, upon entering  
10 into a program loan with a borrower, the local government subdivision creating a  
11 district shall file a statement of lien with the recorder of mortgages for the parish in  
12 which the property is located. The lien or privilege shall be for the full amount of  
13 the program loan and shall take effect against third persons upon filing the statement  
14 of lien with the appropriate recorder of mortgages for the parish where the property  
15 is located. The lien shall rank equivalent to that of ad valorem taxes or local  
16 assessments and liens and privileges as provided in La. R.S. 9:4821(1). The  
17 statement of lien shall contain the following:

18 (a) Identity of the lienholder, including a contact name, address, and phone  
19 number.

20 (b) Identity of borrower, including borrower's full name, domicile, and  
21 permanent mailing address, and last four digits of the borrower's social security  
22 number or taxpayer identification number, whichever is applicable.

23 (c) Legal description of the property encumbered by the lien.

24 (d) Date that the lien is created, which means the date that the loan  
25 agreement or promissory note is signed.

26 (e) Dollar amount of the loan for which the lien is created.

27 (f) Maturity date of the loan for which the lien is created.

28 (2) The district may enter into any necessary agreement with the sheriff or  
29 other local ad valorem property tax collector for assessing and collecting the

1 assessment provided for in this Subsection, including provisions for reimbursing the  
2 sheriff or other collector for the cost of such assessment and collection.

3 (3) Upon failure of the property owner to pay the current year's assessment  
4 ~~when due within thirty days of receipt~~, the local governmental subdivision and  
5 district shall have the right to enforce the lien and privilege to recover and collect the  
6 current year's payment or assessment along with any prior year's payment or  
7 assessment remaining delinquent. ~~may file a certified copy of said charges with the~~  
8 ~~recorder of mortgages, and the same, when so filed and recorded, shall operate as a~~  
9 ~~lien and privilege in favor of the local governmental subdivision and district. Such~~  
10 The such lien and privilege shall have the same ranking as an ad valorem tax lien on  
11 immovable property as provided in R.S. 9:4821(1), and may be enforced and  
12 collected by ordinary civil proceeding in accordance with La. C.C.P. Articles 851 et  
13 seq. or by executory process if the loan documentation contains a confession of  
14 judgment or by any other applicable state law to enforce and collect the amount due  
15 ~~or enforced and collected as any ordinary~~ a property tax lien assessed against the  
16 property ~~and collected in any the manner fixed for collection of taxes tax and subject~~  
17 to the same civil penalties for delinquencies, together with attorneys' fees and costs  
18 incurred in notification to the owner and the enforcement and collection of the  
19 amounts owed.

20 (4) The duration of the effect of recordation of a statement of lien, the  
21 method of reinscription of the statement of lien, and the cancellation of recordation  
22 of a statement of lien after the effect of recordation has ceased shall be governed by  
23 the provisions of Chapter 2 of Title XXII-A, of Registry, of Book III of the  
24 Louisiana Civil Code and treated like a mortgage for such purposes.

25 (5) In the event that a program loan is paid in full, then the district shall  
26 provide written evidence of cancellation and release of its lien and have it recorded  
27 in the public mortgage records for the parish where the immovable property is  
28 located.

29 (6) Prepayment of the remaining balance of energy efficiency and renewable  
30 energy improvement program loans is permitted.

- 1                    D. A loan financing program for energy efficiency improvements or  
2                    renewable energy improvements for residential property shall both:  
3                    (1) Impose requirements and conditions on financing arrangements to ensure  
4                    timely repayment.  
5                    (2) Require disclosures to borrowers by the district of the risks involved in  
6                    borrowing, including the risk of foreclosure if a tax delinquency results from default.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_